

REMARKS

This Response is responsive to the Final Action mailed on September 11, 2003. Reconsideration of this application is respectfully requested.

I. The Final Action rejected claims 1-3, 6-10, 12, 13, 32, 33 and 35-37 under 35 U.S.C. 102(e) "as being anticipated by Aasmul et al. (USPN 6,533,183)." Specifically, the Examiner assured that:

Aasmul et al. discloses a length of material that can be used on syringes that consists of indicators that represent a code when a light beam (electromagnetic energy) is transmitted and reflected from the length of material (notches and grooves) therefore, providing information about the syringe. (Figures 1,2,3,4,5 and Paragraph [0002], [0003], [0011], [0041], and entire reference).

Applicants respectfully traverse the Examiner's rejection.

Aasmul discloses a cartridge (1) for an injection device which includes thereon a code represented by a number of bars (2, 3, 4, 5) that are oriented perpendicular to the longitudinal axis of the cartridge. The bars (2, 3, 4, 5) are disclosed to be transparent and are provided with an optical grating which diffracts and reflects light impinging on the surface carrying the code so that a portion of the light is reflected from the surface of the bar to be detected for the indication of the presence of the bar when the bar passes a reading light field. The reflections from the bars can be interpreted as representing "1"s and "0"s in a binary code.

Aasmul does not disclose or suggest a length of material (for example, a syringe wall) including a plurality of indicators along thereof at unique predetermined positions, wherein each of the indicators is adapted to interact with at least a portion of electromagnetic energy being propagated through the length of material along the length of the material in a manner that is detectable,

and further wherein the predetermined positions of the indicators providing information about the syringe configuration.

To the contrary, Aasmul discloses what is essentially an optical scanning technique in which the "bar code" is not added to the cartridge of Aasmul via a label, but is formed on the cartridge using bands or areas of optical grating. Unlike the present claimed invention, in which light must be "propagated" through the length of material (or syringe wall) to interact with the indicators in a manner that is detectable, in Aasmul light is directed to impinge upon the areas of optical grating of the cartridges from outside of the cartridge in a direction generally orthogonal to the orientation of the axis of the cartridge. See, for example, Figures 1 through 5 of Aasmul et al. Most of the light transmits through the generally translucent optical gratings of Aasmul in a direction generally orthogonal to the axis thereof and some is reflected.

Once again, there is no disclosure or suggestion in Aasmul of propagating light or other electromagnetic energy through the length of the cartridge thereof to interact with indicators. Indeed, even if, for example, light could be propagated through the cartridges of Aasmul (for which there is no disclosure in Aasmul), it is not clear that the optical gratings of Aasmul are suitable to interact with such (internally) propagated light to create a detectable signal. Moreover, even if the first band of optical grating (see, for example, Figure 1 of Aasmul et al.) interacted with, for example, light being propagated through the wall of the cartridge, it is unlikely that there would be sufficient light energy propagated through the cartridge of Aasmul near the surface of such cartridge to create a detectable interaction with optical grating bands further down the axis of the cartridge.

For at least the above reasons, Applicants submit that the Aasmul et al. patent does not disclose each and every element or limitation of claims 1-3, 6-10, 12, 13, 32, 33 and 35-37. Consequently, Applicants submit that the Aasmul et al.

patent does not anticipate claims 1-3, 6-10, 12, 13, 32, 33 and 35-37, and that the rejection based thereon should be withdrawn.¹

II. The Final Action rejected claims 1-3, 6-10, 12, 13, 32, 33 and 35-49 “under 35 U.S.C. 103(a) as being unpatentable over Hitchins et al. (USPN 5,944,694) and further in view of Aasmul et al. as applied to claims 1-3, 6-10, 12, 13, 32, 33 and 35-37 above [in the Section 102(e) rejection].” Applicants respectfully traverse the Examiner’s rejection.

Hitchins et al. discloses syringes and injectors that enable the use of previously known syringe materials at higher pressures than previously attainable or the use of other materials not previously usable with high pressure-syringe and injector designs. In one embodiment, for example, Hitchins et al. discloses a syringe including an elongated cylindrical main body having a first pair and a second pair of mounting flanges. As illustrated, for example, in Figure 9 of Hitchins et al., the mounting flanges thereof can be provided with recesses or depressions (190 and 192), to convey information concerning the syringe and/or its contents to an injector. Hitchins et al. sets forth that “varying the presence, type and/or location of such depressions may be used to encode information.” A spring-actuated sensor switch 194 of Hitchins et al. can be positioned to be activated by one of depressions 190 or 192 to indicate, for example, the type of syringe which has been installed, the identity of the fluid contained therein and/or the amount of fluid contained therein.

Hitchins et al. does not disclose or suggest a length of material (for example, a syringe wall) including a plurality of indicators at unique predetermined positions along the length of material, wherein each of the indicators is adapted to interact with at least a portion of electromagnetic energy being propagated through the length of material in a manner that is detectable,

¹ Applicants reserve the right to swear behind the effective filing date of the Aasmul et al. patent, if such becomes necessary or expeditious at a later date during the prosecution of this patent application.

and further wherein the predetermined positions of the indicators providing information about the syringe configuration. The Patent Office may not permissibly ignore limitations in the claims. See Ex Parte Murphy and Burford, 217 USPQ 479, 481 (P.O. Bd. Appls. 1982) (“it is error to ignore specific limitations distinguishing over the cited reference”); In re Boe, 505 F.2d 1297, 184 USPQ 38 (CCPA). Once again, unlike the presently claimed invention, Hitchins et al. discloses the mechanical cooperation of a spring-actuated sensor switch with one or more depressions or detents to provide information of syringe configuration.

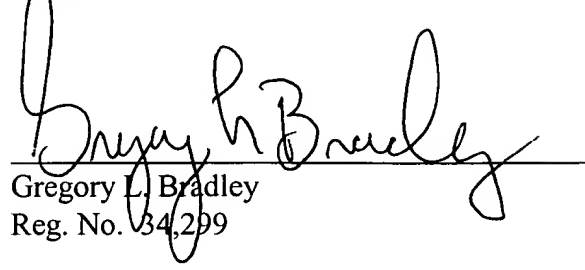
For at least the reasons set forth above, Applicants respectfully traverse the Examiner’s rejection. Hitchins et al. does not overcome the deficiencies of Aasmul et al. set forth above. Consequently, Applicants submit that a combination of the Hitchins et al. and Aasmul et al. patents does not render obvious Applicants’ inventions of claims 1-3, 6-10, 12, 13, 32, 33 and 35-49.

III. Applicants submit that new claims 50-73 are patentable over the Aasmul et al. and Hitchins et al. patents for at least the reasons provided above. New claims 50-73 are fully supported by the specification, original claims and drawings. Therefore, Applicants submit that new claims 50-73 do not constitute new matter.

IV. Applicants have cancelled claims 4, 5, 11, 14-31 and 34 without prejudice or disclaimer as being directed to a non-elected invention. Applicants intend and reserve the right to file claims 4, 5, 11, 14-31 and 34 in one or more continuing applications.

In view of the foregoing amendments and remarks, Applicants submit that the application is now in condition for allowance. Reconsideration of this application is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregory L. Bradley", is written over a horizontal line. The signature is fluid and cursive.

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